

Sentencing Legislation Amendment Bill 2016

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Western Australia

LEGISLATIVE COUNCIL

Sentencing Legislation Amendment Bill 2016

A Bill for

An Act to amend the following Acts —

- **the *Sentence Administration Act 2003*;**
- **the *Sentencing Act 1995*;**
- ***The Criminal Code*.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Sentencing Legislation Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 and Part 4 Divisions 1 and 2 — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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**Part 2 — Amendments about some
long-term prisoners**

Division 1 — *Sentence Administration Act 2003* amended

3. Act amended

This Division amends the *Sentence Administration Act 2003*.

4. Section 4 amended

(1) In section 4(2) insert in alphabetical order:

Schedule 3 prisoner means a person described in
Schedule 3 column 2;

(2) In section 4(2) in the definition of ***Governor’s pleasure detainee***:

(a) in paragraph (b) delete “*Code*;” and insert:

Code; or

(b) after paragraph (b) insert:

(c) a person subject to a direction or sentence
under repealed section 661 or 662 of *The
Criminal Code*;

(3) In section 4(2) in the definition of ***prisoner*** paragraph (b) delete
“a life” and insert:

life

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Part 2 Amendments about some long-term prisoners

Division 1 Sentence Administration Act 2003 amended

s. 5

1 **5. Section 11 amended**

2 Delete section 11(3).

3 **6. Section 12 amended**

4 (1) Delete section 12(2)(b) and (c) and insert:

5

6 (b) whenever it considers it necessary to do so.

7

8 (2) In section 12(4)(b) delete “(2)(b) or (c),” and insert:

9

10 (2)(b),

11

12 (3) In section 12(5)(a) delete “offence” and insert:

13

14 offence, or offences,

15

16 (4) Delete section 12(6).

17 **7. Section 12A amended**

18 (1) Delete section 12A(1) and (2) and insert:

19

20 (1) A report must be given under this section about a
21 Schedule 3 prisoner regardless of whether or not a
22 report has been given about the prisoner under
23 section 12 (although reports may be combined under
24 section 12B).

25 (2) The Board must give the Minister a written report
26 about a Schedule 3 prisoner —

27 (a) described in Division 1 column 2 of that
28 Schedule — at the times provided in columns 3

1 **8. Section 12B inserted**

2 At the end of Part 2 Division 3 insert:

3

4 **12B. Combined reports may be given under**
5 **sections 12 and 12A**

6 (1) The Board may combine the following reports to form
7 one report (a *combined report*) —

8 (a) a report that is to be given about a prisoner
9 under section 12 (the *first report*) and a report
10 that is due to be given about the same prisoner
11 under section 12A within 3 months of the first
12 report; or

13 (b) a report that is due to be given about a prisoner
14 under section 12A at a time provided in one
15 item of Schedule 3 (the *first report*) and
16 another report, or reports, due to be given about
17 the same prisoner under section 12A at a time,
18 or times, provided in another item, or items, of
19 Schedule 3 that is, or are, within 3 years of the
20 first report.

21 (2) A combined report given in the circumstances
22 described in —

23 (a) subsection (1)(a) is to be taken to have been
24 given under section 12 and under section 12A;

25 (b) subsection (1)(b), and that specifies each item
26 of Schedule 3 in respect of which a report about
27 the prisoner is being combined, is to be taken to
28 satisfy the requirements of section 12A for a
29 report about that prisoner at the time provided
30 under each of those items.

31 (3) A report under section 12A referred to in
32 subsection (1)(a) may be a combined report given in
33 the circumstances described in subsection (1)(b).
34

1 **9. Section 13 amended**

2 In section 13(1) delete the definition of *prisoner* and insert:

3

4 *prisoner* means a Schedule 3 prisoner.

5

6 Note: The heading to amended section 13 is to read:

7 **Re-socialisation programmes for Schedule 3 prisoners**

8 **10. Section 14 amended**

9 In section 14(1) in the definition of *prisoner* delete
10 paragraph (b) and insert:

11

12 (b) a Schedule 3 prisoner.

13

14 Note: The heading to amended section 14 is to read:

15 **Re-socialisation programmes for certain other prisoners**

16 **11. Section 25 amended**

17 Delete section 25(1) and (1A) and insert:

18

19 (1) In this section —

20 *prisoner* means any of the following prisoners —

21 (a) a prisoner serving life imprisonment for murder
22 where —

23 (i) a minimum period has been set under
24 section 90(1)(a) of the *Sentencing*
25 *Act 1995* and the prisoner has served
26 that minimum period; or

27 (ii) the prisoner was sentenced before
28 4 November 1996;

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Part 2 Amendments about some long-term prisoners

Division 1 Sentence Administration Act 2003 amended

s. 12

- 1 (b) a prisoner serving life imprisonment for an
2 offence other than murder where —
3 (i) the prisoner has served the period
4 required by section 96(1) of the
5 *Sentencing Act 1995*; or
6 (ii) the prisoner was sentenced before
7 4 November 1996.
8
- 9 (1A) The Governor may make a parole order in respect of a
10 prisoner but only if a report about the prisoner has been
11 given by the Board to the Minister under section 12
12 or 12A.
13

14 **12. Section 27A amended**

15 In section 27A delete “people who are in custody during the
16 Governor’s pleasure.” and insert:

17
18 a Governor’s pleasure detainee.
19

20 **13. Section 27B amended**

21 (1) In section 27B(1) delete “person in, or regarded as being in,
22 strict or safe custody by virtue of an order made under
23 Chapter XXVIII of *The Criminal Code*” and insert:

24
25 person who is a Governor’s pleasure detainee
26

27 (2) In section 27B(2) delete “12.” and insert:

28
29 12 or 12A.
30

1 **14. Part 11 inserted**

2 After section 122 insert:

3

4 **Part 11 — Transitional and validation**
5 **provisions for *Sentencing Legislation***
6 ***Amendment Act 2016 Part 2***

7 **123. Terms used**

8 In this Part —

9 ***commencement*** means the day on which the
10 *Sentencing Legislation Amendment Act 2016 Part 2*
11 comes into operation;

12 ***former transitional provisions*** means —

- 13 (a) the *Sentencing (Consequential Provisions)*
14 *Act 1995* section 83, 86, 87 or 91(1), as affected
15 by the *Sentencing Legislation Amendment and*
16 *Repeal Act 2003* Schedule 1 clause 13; and
17 (b) the *Offenders Community Corrections Act 1963*
18 as continued in operation by any of those
19 provisions of the *Sentencing (Consequential*
20 *Provisions) Act 1995*;

21 ***pre-1996 prisoner*** means a prisoner —

- 22 (a) sentenced before 4 November 1996; and
23 (b) to whom the *Sentencing (Consequential*
24 *Provisions) Act 1995* section 83, 86, 87
25 or 91(1) applied;

26 ***transitional period*** means the period —

- 27 (a) beginning on 4 November 1996; and
28 (b) ending immediately before commencement.

- 1 **124. Reports during the transitional period: pre-1996**
2 **prisoners**
- 3 If a report given during the transitional period about a
4 pre-1996 prisoner was not given in accordance with a
5 former transitional provision that permitted or required
6 a person to give a report about the prisoner then —
- 7 (a) each provision of the *Sentence Administration*
8 *Act 1995* that would have permitted or required
9 a person to give a report about the prisoner had
10 the prisoner been sentenced on or after
11 4 November 1996 and before 31 August 2003
12 is taken to have applied, and the former
13 transitional provision is taken not to have
14 applied, to and in respect of the prisoner during
15 that period; and
- 16 (b) each provision of this Act that would have
17 permitted or required a person to give a report
18 about the prisoner had the prisoner been
19 sentenced on or after 31 August 2003 and
20 before commencement is taken to have applied,
21 and the former transitional provision is taken
22 not to have applied, to and in respect of the
23 prisoner during that period.
- 24 **125. Participation in re-socialisation programmes:**
25 **pre-1996 prisoners**
- 26 If a pre-1996 prisoner participated, or purported to
27 participate, in a re-socialisation programme on or after
28 28 January 2007 and before commencement, then each
29 provision of this Act that would have permitted the
30 prisoner to participate in the programme had the
31 prisoner been sentenced on or after 28 January 2007 is
32 taken to have applied to and in respect of that prisoner
33 during that period.

- 1 **126. Release on parole: pre-1996 prisoners**
- 2 (1) If the release on parole of a pre-1996 prisoner during
- 3 the transitional period was not in accordance with a
- 4 former transitional provision relating to the release of
- 5 the prisoner on parole then —
- 6 (a) each provision of the *Sentence Administration*
- 7 *Act 1995* that would have been about the
- 8 release of the prisoner on parole had the
- 9 prisoner been sentenced on or after
- 10 4 November 1996 and before 31 August 2003
- 11 is taken to have applied, and the former
- 12 transitional provision is taken not to have
- 13 applied, to and in respect of the prisoner during
- 14 that period; and
- 15 (b) each provision of this Act that would have been
- 16 about the release of the prisoner on parole had
- 17 the prisoner been sentenced on or after
- 18 31 August 2003 and before commencement is
- 19 taken to have applied, and the former
- 20 transitional provision is taken not to have
- 21 applied, to and in respect of the prisoner during
- 22 that period.
- 23 (2) In making a decision during the transitional period
- 24 about the release from custody of a pre-1996 prisoner
- 25 under a provision of the *Sentence Administration*
- 26 *Act 1995* or this Act that applied by virtue of
- 27 subsection (1), any of the following, according to the
- 28 terms of the provision, may have been taken into
- 29 account —
- 30 (a) any report given about the prisoner under
- 31 provisions that apply to and in respect of the
- 32 prisoner by virtue of section 124;
- 33 (b) the participation by the prisoner in any
- 34 re-socialisation programme under provisions

1 that apply to and in respect of the prisoner by
2 virtue of section 125.

3 **127. Validation of parole orders: pre-1996 prisoner**

4 A parole order made in relation to the release from
5 custody of a pre-1996 prisoner is, and is taken to have
6 always been, as valid as it would have been if this Part
7 had been in force when it was made.

8 **128. Inconsistency with former transitional provisions**

9 If a provision of this Act, or the *Sentence*
10 *Administration Act 1995*, that applies by virtue of this
11 Part is inconsistent with a provision of the former
12 transitional provisions, the provision of this Act, or the
13 *Sentence Administration Act 1995*, prevails.
14

15 **15. Schedule 3 inserted**

16 After Schedule 2 insert:

17
18 **Schedule 3 — Reports and re-socialisation**
19 **programmes for certain prisoners**

20 [s. 12A and 13]

21 **Division 1 — Current sentence types**

Item No.	Description of prisoner	First report due	Subsequent reports due
1.	A person serving a sentence of life imprisonment for an offence other than murder	7 years after the day on which the term began or is taken to have begun	Every 3 years after that

Item No.	Description of prisoner	First report due	Subsequent reports due
2.	A person serving a sentence of life imprisonment for murder where a minimum period has been set under the <i>Sentencing Act 1995</i> section 90(1)(a)	At the end of the minimum period	Every 3 years after that
3.	A person serving a sentence of indefinite imprisonment	One year after the day on which the sentence began	Every 3 years after that
4.	A Governor's pleasure detainee subject to a sentence of detention imposed under <i>The Criminal Code</i> section 279(5)(b)	One year after the day on which the detention began	Every year after that

1

Division 2 — Former sentence types

Item No.	Description of prisoner	First report due	Subsequent reports due
5.	A person serving a sentence of strict security life imprisonment commuted from a sentence of death under <i>The Criminal Code</i> section 679 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)	20 years after the sentence was commuted	Every 3 years after that

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Part 2 Amendments about some long-term prisoners

Division 1 Sentence Administration Act 2003 amended

s. 15

Item No.	Description of prisoner	First report due	Subsequent reports due
6.	A person serving a sentence of life imprisonment commuted from a sentence of death under <i>The Criminal Code</i> section 679 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)	10 years after the sentence was commuted	Every 3 years after that
7.	A person serving a sentence of strict security life imprisonment for wilful murder under <i>The Criminal Code</i> section 282(a)(i) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set	20 years after the term began	Every 3 years after that
8.	A person serving a sentence of life imprisonment for wilful murder under <i>The Criminal Code</i> section 282(a)(ii) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set	12 years after the day on which the term began or is taken to have begun	Every 3 years after that
9.	A person serving a sentence of life imprisonment for murder under <i>The Criminal Code</i> section 282(b) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set	7 years after the day on which the term began or is taken to have begun	Every 3 years after that

Item No.	Description of prisoner	First report due	Subsequent reports due
10.	<p>A person serving a sentence of strict security life imprisonment where a minimum period has been set under —</p> <p>(a) the <i>Sentencing Act 1995</i> section 91(1) (as it was immediately before the commencement of the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 19); or</p> <p>(b) the <i>Offenders Community Corrections Act 1963</i> section 40D (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 77)</p>	At the end of the minimum period	Every 3 years after that
11.	<p>A person serving a sentence of life imprisonment for murder or wilful murder where a minimum period has been set under —</p> <p>(a) the <i>Sentencing Act 1995</i> section 90(1) or (2) (as it was immediately before the commencement of the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 19); or</p>	At the end of the minimum period	Every 3 years after that

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Part 2 Amendments about some long-term prisoners

Division 1 Sentence Administration Act 2003 amended

s. 15

Item No.	Description of prisoner	First report due	Subsequent reports due
	(b) the <i>Offenders Community Corrections Act 1963</i> section 40D (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 77)		
12.	A person serving a sentence of life imprisonment for an offence other than murder imposed before the commencement of the <i>Acts Amendment (Imprisonment and Parole) Act 1987</i> section 6	5 years after the day on which the term began or is taken to have begun	Every 3 years after that
13.	A person serving a sentence of life imprisonment for an offence other than murder imposed on or after the commencement of the <i>Acts Amendment (Imprisonment and Parole) Act 1987</i> section 6	7 years after the day on which the term began or is taken to have begun	Every 3 years after that
14.	A person subject to a direction or sentence under <i>The Criminal Code</i> section 661 or 662 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)	For section 661 — 2 years after the day on which the detention began For section 662 — one year after the day on which the detention began	Every year after that

Item No.	Description of prisoner	First report due	Subsequent reports due
15.	A person in, or regarded as being in, strict or safe custody by virtue of an order under <i>The Criminal Code</i> section 282 (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10)	One year after the day on which the detention began	Every year after that

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2

Division 2 — *The Criminal Code* amended

3

16. Act amended

4

This Division amends *The Criminal Code*.

5

17. Schedule 1 clause 3 amended

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Delete Schedule 1 clause 3(7).

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Part 3 — Amendments about parole and post-sentencing supervision

Division 1 — *Sentencing Act 1995* amended

18. Act amended

This Division amends the *Sentencing Act 1995*.

19. Section 89 amended

(1) In section 89(2) delete “12” (each occurrence) and insert:

6

(2) In section 89(4) delete “2” and insert:

one

20. Section 97A inserted

At the end of Part 13 Division 4 insert:

97A. Declaration of serious violent offence for purposes of *Sentence Administration Act 2003* Part 5A

(1) In this section —

family and domestic relationship has the meaning given in the *Restraining Orders Act 1997* section 4(1);

offence does not include an offence specified in the *Sentence Administration Act 2003* Schedule 4;

victim has the meaning given in section 13.

(2) This section applies if a court is sentencing an offender to imprisonment for an indictable offence.

- 1 (3) The court may, for the purposes of the *Sentence*
2 *Administration Act 2003* Part 5A, declare the offence to
3 be a serious violent offence if the offence —
- 4 (a) involved the use of, or counselling or procuring
5 the use of, or conspiring or attempting to use,
6 serious violence against another person; or
- 7 (b) resulted in serious harm to, or the death of,
8 another person.
- 9 (4) The court must regard the existence of any of the
10 following circumstances as an aggravating factor when
11 deciding whether to make a declaration —
- 12 (a) the offender has a history of violent offending;
- 13 (b) the offender was in a family and domestic
14 relationship with a victim of the offence when
15 the offence was committed;
- 16 (c) a victim of the offence was under 12 years of
17 age when the offence was committed.
- 18 (5) A declaration may be made by the court on its own
19 initiative or on an application by the prosecutor.
20

21 **Division 2 — *Sentence Administration Act 2003* amended**

22 **21. Act amended**

23 This Division amends the *Sentence Administration Act 2003*.

24 **22. Section 4 amended**

- 25 (1) In section 4(2) insert in alphabetical order:

26
27 ***post-sentence supervision order*** means a post-sentence
28 supervision order made under Part 5A;

29 ***supervised offender*** has the meaning given in
30 section 74E(1);
31

1 (2) In section 4(3) insert in alphabetical order:

2

3 *PSSO* for post-sentence supervision order;

4

5 **23. Section 22 amended**

6 In section 22(1)(a) and (b) delete “12” and insert:

7

8 6

9

10 **24. Section 24 deleted**

11 Delete section 24.

12 **25. Part 5A inserted**

13 After section 74 insert:

14

15 **Part 5A — Post-sentence supervision of**
16 **certain offenders**

17 **74A. Terms used**

18 In this Part —

19 *breach*, in relation to a PSSO, means to contravene any
20 obligation or requirement of the order;

21 *cancelled PSSO* has the meaning given in
22 section 74K(1);

23 *prisoner* means a prisoner who is serving a fixed term
24 for a serious violent offence;

25 *PSSO considerations* has the meaning given in
26 section 74B;

27 *PSSO period* has the meaning given in section 74E(2);

- 1 **serious violent offence** means —
- 2 (a) an offence specified in Schedule 4; or
- 3 (b) an offence declared under the *Sentencing*
- 4 *Act 1995* section 97A(3) to be a serious violent
- 5 offence.
- 6 **74B. PSSO considerations**
- 7 In this Part a reference to the PSSO considerations is a
- 8 reference to these considerations —
- 9 (a) issues for any victim of a serious violent
- 10 offence for which the prisoner is in custody,
- 11 including any matter raised in a victim’s
- 12 submission;
- 13 (b) the behaviour of the prisoner when in custody
- 14 insofar as it may be relevant to determining
- 15 how the prisoner is likely to behave if released;
- 16 (c) whether the prisoner has participated in
- 17 programmes available to the prisoner when in
- 18 custody, and if not the reasons for not doing so;
- 19 (d) the prisoner’s performance when participating
- 20 in a programme mentioned in paragraph (c);
- 21 (e) the behaviour of the prisoner when subject to
- 22 any PSSO made previously;
- 23 (f) the likelihood of the prisoner committing a
- 24 serious violent offence when subject to a PSSO;
- 25 (g) the likelihood of the prisoner complying with
- 26 the standard obligations and any additional
- 27 requirements of any PSSO;
- 28 (h) any other matter that is or may be relevant to
- 29 whether the prisoner should be subject to a
- 30 PSSO after the prisoner’s release.

- 1 **74C. Reports by CEO to Board about prisoners**
- 2 (1) The CEO must give the Board a written report about
- 3 every prisoner that addresses the PSSO considerations
- 4 relating to the prisoner.
- 5 (2) The report must be given to the Board no later than
- 6 3 months before the end of the prisoner’s term.
- 7 (3) This section applies whether or not the prisoner is
- 8 subject to an early release order.
- 9 **74D. Board may make PSSO**
- 10 (1) Before the end of a prisoner’s term, the Board must
- 11 consider whether a post-sentence supervision order
- 12 should be made in respect of the prisoner.
- 13 (2) Subsection (1) applies whether or not the prisoner is
- 14 subject to an early release order.
- 15 (3) If the Board, having regard to —
- 16 (a) the PSSO considerations relating to the
- 17 prisoner; and
- 18 (b) the report made by the CEO under section 74C;
- 19 and
- 20 (c) any other information about the prisoner
- 21 brought to its attention,
- 22 decides that it is appropriate to make a post-sentence
- 23 supervision order in respect of the prisoner, the Board
- 24 must do so.
- 25 **74E. Nature of PSSO**
- 26 (1) A PSSO is an order that the person specified in the
- 27 order (the *supervised offender*) must during the PSSO
- 28 period comply with —
- 29 (a) the standard obligations in section 74F; and

- 1 (b) any of the additional requirements in
2 section 74G that are specified in the PSSO.
- 3 (2) Subject to section 74K(2), the *PSSO period* is the
4 period of 2 years beginning on —
- 5 (a) if the supervised offender is not released on
6 parole — the day on which the offender is
7 released after serving the offender’s term; or
- 8 (b) if the supervised offender is released on
9 parole — the day after the day on which the
10 offender’s term ends.

11 **74F. Standard obligations of PSSO**

12 The standard obligations of a PSSO are that the
13 supervised offender —

- 14 (a) must report to a community corrections centre
15 within 72 hours after being released, or as
16 otherwise directed by a CCO; and
- 17 (b) must notify a CCO of any change of address or
18 place of employment within 2 clear working
19 days after the change; and
- 20 (c) must comply with section 76.

21 **74G. Additional requirements of PSSO**

22 A PSSO may contain any of these additional
23 requirements as the Board thinks fit —

- 24 (a) a requirement relating to where the supervised
25 offender must reside;
- 26 (b) requirements relating to the protection of any
27 victim of an offence committed by the
28 supervised offender from coming into contact
29 with the offender;
- 30 (c) a requirement that the supervised offender must
31 wear any device for monitoring purposes;

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- 1 (d) a requirement that the supervised offender
2 permit the installation of any device or
3 equipment at the place where the offender
4 resides for monitoring purposes;
- 5 (e) a requirement that, if the CEO so directs, the
6 supervised offender —
- 7 (i) wear any device for monitoring
8 purposes;
- 9 (ii) permit the installation of any device or
10 equipment at the place where the
11 offender resides for monitoring
12 purposes;
- 13 (f) a requirement that the supervised offender must
14 not leave Western Australia except with and in
15 accordance with the written permission of the
16 CEO;
- 17 (g) requirements to facilitate the supervised
18 offender's rehabilitation;
- 19 (h) a requirement that the supervised offender
20 must, in each period of 7 days, do the
21 prescribed number of hours of community
22 corrections activities;
- 23 (i) a requirement that the supervised offender
24 must —
- 25 (i) seek or engage in gainful employment
26 or in vocational training; or
- 27 (ii) engage in gratuitous work for an
28 organisation approved by the CEO;
- 29 (j) prescribed requirements.

- 1 **74H. CEO to ensure person subject to PSSO is**
2 **supervised**
- 3 The CEO must ensure that a CCO is assigned to
4 supervise a supervised offender for the duration of the
5 PSSO period.
- 6 **74I. Amendment of PSSO**
- 7 (1) The Board may amend a PSSO at any time before the
8 end of the PSSO period.
- 9 (2) If a PSSO is amended, the amended PSSO applies
10 accordingly.
- 11 **74J. Cancellation of PSSO**
- 12 (1) The Board may cancel a PSSO at any time before the
13 commencement of the PSSO period.
- 14 (2) If a supervised offender, during the PSSO period,
15 commits an offence (in this State or elsewhere) and is
16 sentenced to imprisonment for that offence, the PSSO
17 applicable to the supervised offender is cancelled by
18 operation of this section.
- 19 **74K. Subsequent PSSO after cancellation for committing**
20 **offence**
- 21 (1) If a PSSO is cancelled under section 74J(2) (the
22 *cancelled PSSO*), the Board may subsequently make
23 another PSSO in respect of the prisoner.
- 24 (2) The PSSO period in the subsequent PSSO is to be set
25 by the Board but —
- 26 (a) must begin on the day when the prisoner is
27 released; and
- 28 (b) must not be longer than the remaining PSSO
29 period of the cancelled PSSO.

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1 (3) Subsection (2) does not apply if the offence by virtue
2 of which the PSSO is cancelled under section 74J(2) is
3 a serious violent offence.

4 **74L. Offence for breach of PSSO**

5 A supervised offender who breaches a PSSO, without
6 reasonable excuse (proof of which is on the offender),
7 commits a crime.

8 Penalty: imprisonment for 3 years.

9 Summary conviction penalty: a fine of \$18 000 and
10 imprisonment for 18 months.
11

12 **26. Section 75 amended**

13 In section 75 in the definition of *community corrections order*
14 delete “RRO” and insert:

15
16 RRO, a PSSO
17

18 **27. Section 77 amended**

19 After section 77(c) insert:

20
21 (ca) if the offender is subject to a PSSO, report the
22 matter to the CEO and recommend that the
23 offender be charged with an offence under
24 section 74L; or
25

1 **28. Section 78 amended**

2 (1) In section 78(1) in the definition of *minimum hours*
3 *requirement* paragraph (b) delete “order or an RRO —” and
4 insert:

5
6 order, an RRO or a PSSO —
7

8 (2) In section 78(2)(c) delete “order —” and insert:

9
10 order or a PSSO —
11

12 (3) In section 78(3) delete “order.” and insert:

13
14 order or a PSSO.
15

16 **29. Section 83 amended**

17 In section 83 in the definition of *community corrections order*
18 delete “RRO” and insert:

19
20 RRO, a PSSO
21

22 **30. Section 94 amended**

23 In section 94(1)(a) delete “RROs” and insert:

24
25 RROs, PSSOs
26

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Division 2 Sentence Administration Act 2003 amended

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1 **31. Section 107B amended**

2 (1) In section 107B(1) and (2) after “prisoner” insert:

3

4 or supervised offender

5

6 (2) After section 107B(3)(c) insert:

7

8 (ca) to a decision by the Board to make, amend or
9 cancel a PSSO; and

10

11 **32. Section 107C amended**

12 In section 107C(2) after “prisoner” insert:

13

14 or the supervised offender

15

16 **33. Section 109 amended**

17 (1) In section 109(1) delete “prisoner is subject to a parole order
18 (other than a parole order (unsupervised)) or an RRO,” and
19 insert:

20

21 person is subject to a parole order (other than a parole order
22 (unsupervised)), an RRO or a PSSO,

23

24 (2) In section 109(2) delete “prisoner” and insert:

25

26 person

27

28 Note: The heading to amended section 109 is to read:

29

Board may require person to appear before it

1 **34. Section 111 amended**

2 In section 111(2) delete “RRO” and insert:

3

4 RRO, a PSSO

5

6 **35. Section 112 amended**

7 In section 112:

8 (a) after paragraph (g) insert:

9

10 (ga) the number of prisoners who were the subject
11 of a report under section 74C during the
12 previous financial year;

13 (gb) the number of persons released subject to
14 PSSOs during the previous financial year;

15

16 (b) in paragraph (j) after “orders” (1st occurrence) insert:

17

18 and PSSOs

19

20 **36. Section 114 amended**

21 In section 114(2) after “prisoner” (each occurrence) insert:

22

23 or supervised offender

24

25 **37. Section 115A amended**

26 After section 115A(2)(d) insert:

27

28 (da) by the Board to make a PSSO; or

29

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Division 2 Sentence Administration Act 2003 amended

s. 38

1 **38. Part 11 heading amended**

2 In the heading to Part 11 (as inserted by section 14 of this Act)
3 delete “**for *Sentencing Legislation Amendment***
4 ***Act 2016 Part 2*”.**

5 **39. Part 11 Division 1 heading inserted**

6 After the heading to Part 11 (as inserted by section 14 of this
7 Act) insert:
8

9 **Division 1 — Provisions for the *Sentencing Legislation***
10 ***Amendment Act 2016 Part 2***
11

12 **40. Section 123 amended**

13 In section 123 (as inserted by section 14 of this Act) delete
14 “Part” and insert:
15

16 Division
17

18 **41. Section 127 amended**

19 In section 127 (as inserted by section 14 of this Act) delete
20 “Part” and insert:
21

22 Division
23

24 **42. Section 128 amended**

25 In section 128 (as inserted by section 14 of this Act) delete
26 “Part” and insert:
27

28 Division
29

1 **43. Part 11 Division 2 inserted**

2 After section 128 (as inserted by section 14 of this Act) insert:

3

4 **Division 2 — Provisions for the *Sentencing Legislation***
5 ***Amendment Act 2016 Part 3 Division 2***

6 **129. Continued application of former Part 3 Division 4**

7 (1) In this section —

8 *commencement day* means the day on which the
9 *Sentencing Legislation Amendment Act 2016* section 23
10 comes into operation;

11 *former Division* means Part 3 Division 4 as in force
12 immediately before commencement day.

13 (2) If the former Division applied to a prisoner
14 immediately before commencement day then on and
15 after that day the former Division continues to apply to
16 and in relation to the prisoner as if the *Sentencing*
17 *Legislation Amendment Act 2016* section 23 had not
18 come into operation.
19

20 **44. Schedule 4 inserted**

21 After Schedule 3 (as inserted by section 15 of this Act) insert:

22

23 **Schedule 4 — Serious violent offences**

24

[s. 74A]

Enactment	Description of offence
1. <i>The Criminal Code</i>	
s. 279	Murder
s. 280	Manslaughter

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Division 2 Sentence Administration Act 2003 amended

s. 44

Enactment	Description of offence
s. 281	Unlawful assault causing death
s. 283	Attempt to unlawfully kill
s. 294	Act intended to cause grievous bodily harm or prevent arrest
s. 297	Grievous bodily harm
s. 320	Sexual offences against child under 13
s. 321	Sexual offences against child of or over 13 and under 16
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 327	Sexual coercion
s. 328	Aggravated sexual coercion
s. 330	Sexual offences against incapable person
s. 392	Robbery, if the offence is committed in circumstances described in s. 392(c) or in circumstances of aggravation
s. 444(1)	Criminal damage, if the offence is committed in circumstances described in s. 444(1)(a)

Enactment	Description of offence
s. 445A	Breach of s. 444A duty
2. <i>Bush Fires Act 1954</i>	
s. 32(2)	Offences of lighting or attempting to light fire likely to injure
3. <i>Road Traffic Act 1974</i>	
s. 59	Dangerous driving causing death or grievous bodily harm

1 **Part 4 — Other amendments to the *Sentencing***
2 ***Act 1995***

3 **Division 1 — Preliminary**

4 **45. Act amended**

5 This Part amends the *Sentencing Act 1995*.

6 **Division 2 — Amendments about circumstances of aggravation**

7 **46. Section 145A inserted**

8 After section 145 insert:

9
10 **145A. Existence of circumstances of aggravation is**
11 **question for judge to determine**

- 12 (1) In this section —
13 *circumstances of aggravation* means circumstances in
14 which an offence is committed that —
15 (a) are not elements of the offence; and
16 (b) increase the statutory penalty for the offence.
- 17 (2) If, on a plea of guilty by the accused, a superior court is
18 required to determine in proceedings under this Act
19 whether the offence was committed in circumstances of
20 aggravation, that determination is the determination of
21 a question of fact for the purposes of section 146.
22

1 **47. Section 150AB inserted**

2 After section 150A insert:

3

4 **150AB. Application of *Sentencing Legislation Amendment***
5 ***Act 2016* amendments about circumstances of**
6 **aggravation**

7 (1) In this section —

8 *commencement* means the coming into operation of
9 the *Sentencing Legislation Amendment Act 2016* Part 4
10 Division 2.

11 (2) This Act, as amended by the *Sentencing Legislation*
12 *Amendment Act 2016* Part 4 Division 2, applies to the
13 determination under section 146 of whether an offence
14 was committed in circumstances of aggravation —

15 (a) even if the offence was committed before
16 commencement; and

17 (b) even if the offender pleaded guilty before
18 commencement; and

19 (c) even if the determination has arisen as a result
20 of an appeal against a sentence imposed before
21 commencement.
22

23 **Division 3 — Amendments about suspended fines**

24 **48. Section 14 amended**

25 In section 14(2):

26 (a) in paragraph (b) delete “fine,” and insert:

27

28 fine; or
29

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Part 4 Other amendments to the Sentencing Act 1995

Division 3 Amendments about suspended fines

s. 49

- 1 (b) after paragraph (b) insert:
2
- 3 (c) under Part 8A impose a suspended fine,
4
- 5 **49. Section 39 amended**
- 6 After section 39(2)(c) insert:
7
- 8 (ca) with or without making a spent conviction
9 order, under Part 8A impose a suspended fine;
10 or
11
- 12 **50. Section 40 amended**
- 13 In section 40(2):
- 14 (a) in paragraph (b) delete “fine.” and insert:
15
16 fine; or
17
- 18 (b) after paragraph (b) insert:
19
- 20 (c) under Part 8A impose a suspended fine.
21
- 22 **51. Section 44 amended**
- 23 In section 44(1):
- 24 (a) in paragraph (a)(i) delete “(b) and (c); or” and insert:
25
26 (b), (c) and (ca); or
27
- 28 (b) in paragraph (a)(ii) delete “(c)” and insert:
29
30 (c), (ca)
31

1 **52. Part 8A inserted**

2 After section 60 insert:

3

4 **Part 8A — Suspended fine**

5 **60A. When fine may be suspended**

- 6 (1) A court that sentences an offender to a fine may order
7 that the fine be suspended for a period set by the court
8 that is not to be more than 24 months.
- 9 (2) A suspended fine is not to be imposed unless a fine
10 equal to that suspended would, if it were not possible to
11 suspend the fine, be appropriate in all the
12 circumstances.

13 **60B. Effect of suspending fine**

- 14 (1) An offender sentenced to a suspended fine is not to pay
15 any part of the fine that is suspended unless —
- 16 (a) during the suspension period the offender
17 commits an offence (in this State or elsewhere);
18 and
- 19 (b) a court makes an order under section 60E.
- 20 (2) The suspension period begins on the day on which the
21 sentence is imposed.
- 22 (3) An offender who is sentenced to a suspended fine is to
23 be taken to be discharged from the sentence at the end
24 of the suspension period.
- 25 (4) Subsection (3) does not affect the operation of
26 subsection (1) or section 60C or 60E.

- 1 **60C. Re-offender may be dealt with or committed**
- 2 (1) If a court convicts a person of an offence and that
- 3 offence was committed during the suspension period of
- 4 a suspended fine imposed on the person in relation to
- 5 another offence, the court —
- 6 (a) if it is the Magistrates Court or the Children’s
- 7 Court, must deal with the person under
- 8 section 60E unless the suspended fine was
- 9 imposed —
- 10 (i) by the Magistrates Court or the
- 11 Children’s Court for an indictable
- 12 offence; or
- 13 (ii) by a superior court,
- 14 in which case the court must commit the person
- 15 to the court that imposed the suspended fine
- 16 and that court must deal with the person under
- 17 section 60E; or
- 18 (b) if it is the District Court, must deal with the
- 19 person under section 60E unless the suspended
- 20 fine was imposed by the Children’s Court or
- 21 the Supreme Court for an offence which the
- 22 District Court would not have jurisdiction to
- 23 deal with if it were committed by an adult, in
- 24 which case the court must commit the person to
- 25 the court that imposed the suspended fine and
- 26 that court must deal with the person under
- 27 section 60E; or
- 28 (c) if it is the Supreme Court, must deal with the
- 29 person under section 60E.
- 30 (2) The powers in subsection (1) may be exercised by a
- 31 court at any time, even if the suspension period has
- 32 ended.
- 33 (3) Subsection (1) does not affect the powers of the court
- 34 that convicts the person of the offence committed

1 during the suspension period to deal with the person for
2 that offence.

3 (4) A court that under subsection (1) commits a person to
4 another court must certify that the person has been
5 convicted of an offence committed during the
6 suspension period.

7 (5) A certificate by a court under subsection (4) is, in the
8 absence of evidence to the contrary, evidence of its
9 contents.

10 **60D. Alleging re-offending in court**

11 (1) If —

12 (a) a person (the *offender*) has been convicted and
13 dealt with (in this State or elsewhere) for an
14 offence; and

15 (b) that offence was committed during the
16 suspension period of a suspended fine imposed
17 on the offender in relation to another offence,

18 a written notice alleging those matters may be lodged
19 in a court in accordance with this section.

20 (2) The notice may be lodged at any time up until 2 years
21 after the last day of the suspension period.

22 (3) The notice may be signed by a police officer or another
23 person referred to in the *Criminal Procedure Act 2004*
24 section 20(3).

25 (4) The notice must be in a prescribed form and be signed
26 in the presence of a JP or a prescribed court officer (as
27 defined in the *Criminal Procedure Act 2004*
28 section 3(1)) who may issue a summons to the
29 offender.

- 1 (5) The notice must be lodged with, and the summons
2 must direct the offender to appear before, the court that
3 imposed the suspended fine.
- 4 (6) The *Criminal Procedure Act 2004* section 32, with any
5 necessary changes, applies to and in respect of a
6 summons issued under this section.
- 7 (7) An offender who appears before a court as a result of a
8 summons issued under this section must be dealt with
9 by the court under section 60E.

10 **60E. How re-offender to be dealt with**

- 11 (1) If satisfied that a person has been convicted (in this
12 State or elsewhere) of an offence and that the offence
13 was committed during the suspension period of a
14 suspended fine, a court that must deal with the person
15 under this section must deal with the person by one of
16 these methods —
- 17 (a) unless an order under this paragraph or
18 paragraph (b) has already been made, it may
19 order the person to pay the fine that was
20 suspended;
- 21 (b) unless an order under paragraph (a) has already
22 been made, it may order the person to pay part
23 of the fine that was suspended;
- 24 (c) unless the suspension period has ended, it may
25 substitute another suspension period of not
26 more than 24 months for the suspension period
27 originally set, and the new suspension period is
28 to begin on the day it is substituted;
- 29 (d) it may make no order in respect of the
30 suspended fine.
- 31 (2) The powers in subsection (1) may be exercised as often
32 as is necessary.

- 1 (3) A court must make an order under subsection (1)(a)
2 unless it decides that it would be unjust to do so in
3 view of all the circumstances that have arisen, or have
4 become known, since the suspended fine was imposed.
- 5 (4) If a court does not make an order under
6 subsection (1)(a), it must give written reasons for not
7 doing so.
- 8 (5) If a court deals with a person under subsection (1)(d),
9 then, unless the suspension period has ended, the
10 sentence of a suspended fine remains in effect and the
11 suspension period continues to elapse.
- 12 (6) An order by a superior court under subsection (1) in a
13 case where the sentence of a suspended fine was
14 imposed for an offence for which the person had not
15 been convicted on indictment is to be taken, for the
16 purposes of an appeal against the sentence, as being
17 made following a conviction on indictment.
18

19 **Division 4 — Amendments about victim impact statements**

20 **53. Section 23A inserted**

21 At the beginning of Part 3 Division 4 insert:
22

23 **23A. Terms used**

24 In this Division —
25 *family victim*, in relation to an offence, means a person
26 who was, at the time the offence was committed, a
27 member of the primary victim's immediate family, and
28 includes such a person whether or not the person has
29 suffered personal harm as a result of the offence;

- 1 ***member of the primary victim's immediate family***
2 means —
- 3 (a) the primary victim's spouse; or
 - 4 (b) the primary victim's de facto partner; or
 - 5 (c) a person to whom the primary victim is
6 engaged to be married; or
 - 7 (d) a parent, grandparent, guardian, step-parent or
8 step-grandparent of the primary victim; or
 - 9 (e) a child, grandchild, step-child or
10 step-grandchild of the primary victim or some
11 other child for whom the primary victim is the
12 guardian; or
 - 13 (f) a brother, sister, half-brother, half-sister,
14 step-brother or step-sister of the primary
15 victim; or
 - 16 (g) if, at the time of the offence, the primary victim
17 was an Aboriginal person or a Torres Strait
18 Islander requiring care, a person who, in the
19 opinion of the court, is regarded under the
20 customary law or tradition of the primary
21 victim's community as the equivalent of the
22 primary victim's guardian or carer;
- 23 ***personal harm*** means bodily harm or psychological or
24 psychiatric harm;
- 25 ***primary victim***, in relation to an offence, means —
- 26 (a) a person against whom the offence was
27 committed; or
 - 28 (b) a person who was a witness to the offence if it
29 included any of the following —
 - 30 (i) actual or threatened violence;
 - 31 (ii) sexual assault;
 - 32 (iii) bodily harm;
 - 33 (iv) death;

- 1 **requiring care**, in relation to a person, means a person
- 2 who —
- 3 (a) is under 18 years of age; or
- 4 (b) in the absence of positive evidence as to age,
- 5 appears to be under 18 years of age; or
- 6 (c) because of a mental or physical impairment, is
- 7 unable to give a victim impact statement;
- 8 **victim** means a primary victim or a family victim;
- 9 **victim impact statement** means a statement containing
- 10 particulars of —
- 11 (a) in the case of a primary victim, any personal
- 12 harm suffered by the victim as a direct result of
- 13 the offence; or
- 14 (b) in the case of a family victim, the impact of the
- 15 primary victim’s personal harm on the
- 16 members of the primary victim’s immediate
- 17 family.
- 18

19 **54. Section 25 amended**

20 Delete section 25(1).

21 **55. Section 26 amended**

22 After section 26(2) insert:

- 24 (3) A court must, after imposing a sentence of
- 25 imprisonment on an offender, make available to the
- 26 Prisoners Review Board a copy of any victim impact
- 27 statement given to the court under section 24.
- 28

29 Note: The heading to amended section 26 is to read:
30 **Court’s functions in relation to victim impact statement**

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Division 5 — Amendments about CROs

56. Section 49 amended

Delete section 49(1) and insert:

- (1) In this section —
CEO (DOTAG) means the chief executive officer of the Public Sector agency principally assisting the Minister in the administration of this Part.
- (1A) A court making a CRO may impose any requirements on the offender it decides are necessary to secure the good behaviour of the offender.
- (1B) Without limiting subsection (1A), the court may impose a requirement that the offender participate in an activity approved by the CEO (DOTAG).
- (1C) For the purposes of a requirement imposed by a court under subsection (1B), the CEO (DOTAG) may approve —
 - (a) any educational, vocational or personal development programme; or
 - (b) any unpaid work; or
 - (c) any other activity the CEO (DOTAG) considers appropriate.
- (1D) The number of hours set by a court for a requirement imposed by it under subsection (1B) must be at least 10 and not more than 60.
- (1E) As part of a requirement imposed by a court under subsection (1B), the court may require an offender to record the offender’s compliance with the requirement in a log book approved by the court.

1 **57. Section 51 amended**

2 (1) In section 51(1) delete “or a surety for the offender or both
3 have —” and insert:

4
5 has —

6
7 (2) Delete section 51(3), (4) and (5).

8 **58. Section 52 amended**

9 (1) In section 52(2):

10 (a) delete “If” and insert:

11
12 Subject to subsections (3) and (7), if

13
14 (b) delete the passage that begins with “State —” and
15 continues to the end of the subsection and insert:

16
17 State, must order that the full amount agreed to be paid
18 or deposited by the offender be paid or forfeited (as the
19 case may be) to the State.

20
21 (2) Delete section 52(4).

22 (3) After section 52(6) insert:

23
24 (7) Despite subsection (2), the court may order that only
25 part of the amount agreed to be paid or deposited by
26 the offender be paid or forfeited (as the case may be) to
27 the State if —

28 (a) the breach of the CRO relates to a failure to
29 complete a requirement under section 49(1B);
30 and

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- 1 (b) the court is satisfied that —
2 (i) the offender has completed part of the
3 requirement; and
4 (ii) it would be unjust to order the payment
5 or forfeiture of the full amount.
6 (8) The part of the amount ordered to be paid or forfeited
7 under subsection (7) is to be a sum the court considers
8 appropriate in the circumstances.
9

10 **59. Section 131 amended**

11 After section 131(1) insert:
12

- 13 (1A) Subsection (1) does not apply to the breach of a CRO if
14 the breach relates to a failure to complete a requirement
15 referred to in section 49(1B).
16

17 **60. Section 133 amended**

18 In section 133(2) delete “section 52(2).” and insert:
19

20 section 52(2) or (7).
21

22 **Division 6 — Miscellaneous amendments**

23 **61. Section 4 amended**

24 (1) In section 4(1) insert in alphabetical order:
25

26 *parole eligibility order* has the meaning given in
27 section 89(1);

28 *prescribed* means prescribed in the regulations;

- 1 **Prisoners Review Board** means the Prisoners Review
2 Board established under the *Sentence Administration*
3 *Act 2003*;
- 4 **written reasons** includes reasons that are —
- 5 (a) given orally and subsequently transcribed; and
- 6 (b) given orally but also recorded electronically in
7 a format that enables them to be subsequently
8 transcribed.
- 9
- 10 (2) In section 4(1) in the definition of *superior court* delete
11 “Court.” and insert:
- 12
- 13 Court;
- 14
- 15 (3) After section 4(3) insert:
- 16
- 17 (4) In this Act a reference to the suspension of a term or
18 terms of imprisonment is a reference to a suspension
19 of —
- 20 (a) the whole of the term or terms; or
- 21 (b) part of the term or terms.
- 22
- 23 **62. Section 9G amended**
- 24 In section 9G(1) delete “under section 89”.
- 25 **63. Section 22 amended**
- 26 In section 22(1)(b) delete “21 days after being ordered.” and
27 insert:
- 28
- 29 14 days before the sentencing day.
- 30

1 **64. Section 33A amended**

2 Delete section 33A(7).

3 **65. Section 35 amended**

4 Delete section 35(4).

5 **66. Section 45 amended**

6 After section 45(1) insert:

7

8 (1A) In addition to subsection (1), under section 39(2), a
9 court sentencing an offender is not to make a spent
10 conviction order in respect of an offender who is
11 subject to a PSO unless —

12 (a) the offence to which the PSO applies is a
13 simple offence; and

14 (b) the court is satisfied that the offender has
15 complied with any programme requirements
16 imposed as part of the PSO.
17

18 **67. Section 75 amended**

19 After section 75(8)(a) insert:

20

21 (aa) for the purpose of the paid employment of the
22 offender; or
23

24 **68. Section 76 amended**

25 In section 76(1) delete “the whole of”.

26 **69. Section 80 amended**

27 (1) Delete section 80(5A).

1 (2) In section 80(5)(b) delete “order under section 89,” and insert:

2

3 order,

4

5 (3) After section 80(7) insert:

6

7 (7A) If an order is made under subsection (1)(c) or (d) under
8 which a sentence of suspended imprisonment remains
9 in effect and continues to elapse, the court must make
10 the order subject to a supervision requirement in
11 accordance with section 71 as if the sentence were
12 an ISO.

13

14 **70. Section 84F amended**

15 (1) Delete section 84F(5A).

16 (2) In section 84F(5)(b) delete “order under section 89,” and insert:

17

18 order,

19

20 **71. Section 84L amended**

21 In section 84L(3)(b) delete “order under section 89,” and insert:

22

23 order,

24

25 **72. Section 85 amended**

26 In section 85(1) delete the definition of *parole eligibility order*.

1 **73. Section 86 amended**

2 In section 86:

3 (a) delete “of 6 months” and insert:

4

5 of 3 months

6

7 (b) in paragraph (a) delete “6 months; or” and insert:

8

9 3 months; or

10

11 Note: The heading to amended section 86 is to read:

12 **Term of 3 months or less not to be imposed**

13 **74. Section 87 amended**

14 (1) In section 87:

15 (a) delete “If” and insert:

16

17 (1) If

18

19 (b) delete paragraph (a) and insert:

20

21 (a) the offender has previously spent time —

22 (i) in custody in respect of the offence for
23 which the offender is being sentenced;
24 or

25 (ii) in custody in respect of another offence,
26 while on bail for the offence for which
27 the offender is being sentenced;

28 and

29

1 (2) At the end of section 87 insert:

2

3 (2) Subsection (1)(a)(i) does not apply if the time in
4 custody has already been taken into account in
5 sentencing for another offence under
6 subsection (1)(a)(ii).

7

8 **75. Section 89 amended**

9 Delete section 89(1) and insert:

10

11 (1) A court sentencing an offender to a fixed term of
12 imprisonment may make an order (a *parole eligibility*
13 *order*) that the offender be eligible to be considered for
14 parole in respect of that term by the Prisoners Review
15 Board.

16

17 **76. Section 98 amended**

18 In section 98(1)(c) delete “under Part 13”.

19 **77. Part 18 Division 6 inserted**

20 At the end of Part 18 insert:

21

22 **Division 6 — Functions of speciality courts**

23 **136A. Application of Division**

24 This Division applies if —

25 (a) the court that imposes a community order on an
26 offender is a speciality court; or

27 (b) an offender is committed for trial or sentence
28 for an offence to a superior court by a speciality
29 court and a community order is imposed on the

1 offender by the superior court and the superior
2 court orders that this Division is to apply.

3 **136B. Term used: court**

4 In this Division —

5 *court* means a speciality court and includes a superior
6 court referred to in section 136A(b).

7 **136C. Court may direct offender on community order to
8 appear**

- 9 (1) The court may order that the offender appear or
10 reappear before the court after the imposition of the
11 community order —
- 12 (a) at a time and place fixed by the court; or
13 (b) if and when summonsed by the court,
- 14 so that the court can ascertain whether the offender is
15 complying with the sentence.
- 16 (2) An order may be made under subsection (1) on any
17 reappearance of the offender pursuant to a previous
18 order made under subsection (1).
- 19 (3) If an offender does not reappear before the court at the
20 time and place fixed or in response to a summons
21 issued by the court, the court may issue a warrant to
22 have the offender arrested and brought before the court.
- 23 (4) On a reappearance ordered under subsection (1), or
24 compelled under subsection (1) or (3), the court may
25 amend a community order.

26 **136D. Court to deal with re-offender**

- 27 (1) If this Division applies and a court other than the court
28 convicts the offender of an offence as referred to in
29 section 128, that court must commit the offender to the

1 court and the court must deal with the offender under
2 section 130.

3 (2) Section 128(2) to (4) apply for the purposes of
4 subsection (1).

5 (3) If this Division applies, a notice under section 129(1)
6 must be lodged with the court and a summons or
7 warrant issued under section 129 must direct the
8 offender to appear or be brought before the court.

9 **136E. Court to deal with application to amend or cancel**
10 **community order**

11 If this Division applies, an application under
12 section 126 is to be made to the court.

13 **136F. Court to deal with proceedings for breaches**

14 If this Division applies, a prosecution for an offence
15 against section 131(1) is to be commenced in, and
16 heard and determined by, the court and, if the offender
17 is convicted, the court must deal with the offender
18 under sections 132 and 133.
19

20 **78. Part 18A inserted**

21 Before Part 19 insert:
22

23 **Part 18A — Review of conditional orders**

24 **136G. Terms used**

25 In this Part —

26 **CEO** means —

27 (a) in relation to a CRO — the CEO (DOTAG);

1 (b) in relation to a CSI, ISO or PSO — the CEO
2 (corrections);

3 *conditional order* means any of the following —

- 4 (a) a CRO;
5 (b) a CSI;
6 (c) an ISO;
7 (d) a PSO.

8 **136H. Application to review**

- 9 (1) The CEO may apply to a court to review a conditional
10 order if the CEO is of the opinion that the offender
11 subject to the order might not be able to comply with
12 its requirements.
- 13 (2) The application must be made to the court that imposed
14 the conditional order.
- 15 (3) The application must be made in accordance with the
16 regulations.

17 **136I. Court may confirm, amend or cancel**

- 18 (1) If on an application under section 136H a court is
19 satisfied that an offender subject to a conditional order
20 might not be able to comply with its requirements, the
21 court may make an order under subsection (2) but
22 otherwise it must confirm the conditional order.
- 23 (2) If a court may make an order under this subsection, it
24 may either —
- 25 (a) amend the conditional order so as to change the
26 requirement; or
- 27 (b) if the court thinks that the circumstances of the
28 offender have so altered since the court passed
29 sentence that it is necessary and just to do so,
30 cancel the conditional order and sentence the
31 person for the offence for which the conditional

1
2
3
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5

order was imposed in any manner the court
could if it had just convicted the person of that
offence.

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